

## **REMARKS**

Claims 1-38 are pending. Claims 1, 2, 4, 6, 10-14, 21, 24, 26, 28, 36, and 37 are the only claims that have been examined on the merits. Of these examined claims, claims 1 and 36 are the only independent claims.

In the Office Action, claims 1, 2, 4, 6, 10-14, 24, 26, 28, and 36 were rejected under 35 U.S.C. § 102(e) based on U.S. Patent No. 6,874,966 to Duqueroie et al. (“Duqueroie”).

As explained below, Applicants respectfully disagree with the Section 102(e) claim rejection because Duqueroie does not disclose all of the features recited in independent claims 1 and 36. Further, Applicants do not understand the claim rejection because the Office Action at p. 2 merely asserts that “Duqueroie discloses a device for applying a product as claimed” without supplying any explanation of how the Examiner has interpreted the claims and/or Duqueroie. If the Examiner does not withdraw the Section 102(e) rejection based on Duqueroie, Applicants respectfully request that the Examiner provide a complete explanation of the rejection, and designate any subsequent office action as being non-final in order to provide Applicants with a full and fair opportunity to respond.

### **Independent Claim 1 Is Allowable Over Duqueroie**

Applicants respectfully submit that claim 1 is allowable over Duqueroie because the cited reference does not disclose all of the features recited in claim 1. For example, Duqueroie does not disclose or suggest a device, including, among other features, an applicator including “a first portion configured to contribute to restricting axial movement of the applicator with respect to [a] case, and a second portion distinct from the first portion, the second portion being configured to contribute to rotationally coupling the

applicator to the container . . .,” as recited in claim 1. Rather than disclosing the applicator recited in the claim 1, Duqueroie shows an applicator 30 having studs 81, which are not the same as, and do not disclose, the first and second portions recited in claim 1. For example, the studs 81 do not constitute the recited “distinct” first and second portions having all of the features recited in claim 1.

For at least these reasons, claim 1 is allowable over Duqueroie.

**Independent Claim 36 Is Allowable Over Duqueroie**

Applicants respectfully submit that claim 36 is allowable over Duqueroie because Duqueroie lacks disclosure of all of the features recited in claim 36. For example, Duqueroie does not disclose or suggest a device, including, among other features, an applicator “compris[ing] a screw thread configured to engage with [a] screw thread of [a] case,” as recited in claim 36. Duqueroie discloses an applicator 30 that does not have any screw thread. Although, as mentioned above, Duqueroie’s applicator 30 includes studs 81, the studs 81 are not the same as, and do not disclose, the “screw thread” recited in claim 36.

For at least these reasons, claim 36 is allowable over Duqueroie.

**Dependent Claims 2, 4, 6, 10-14, 24, 26, and 28 Are Allowable Over Duqueroie**

Claims 2, 4, 6, 10-14, 24, 26, and 28 depend from claim 1 and, thus, should be allowable for at least the same reasons claim 1 is allowable. Moreover, at least some of these dependent claims recite features that are not disclosed in Duqueroie. For example, Duqueroie does not have any disclosure of any striation(s), as recited in dependent claims 2 and 6.

In the Office Action, claims 21 and 37 were rejected under 35 U.S.C. § 103(a) based on Duqueroie in view of U.S. Patent No. 6,726,387 to Dumler et al. ("Dumler).

Applicants respectfully request that the Examiner withdraw the claim rejection in accordance with 35 U.S.C. § 103(c). Duqueroie is not prior art under any subsection of 35 U.S.C. § 102 other than § 102(e), (f), and/or (g). The invention covered by the pending claims and the invention of Duqueroie were, at the time of the invention of the pending claims, owned by L'Oréal or subject to an obligation of assignment to L'Oréal. Accordingly, Duqueroie is disqualified as prior art under 35 U.S.C. § 103(c), and the Section 103 claim rejection should be withdrawn. See M.P.E.P. §§ 706.02(I), 706.02(I)(1), and 706.02(I)(2).

For at least the reasons explained above, the claim rejections should be withdrawn, and claims 1, 2, 4, 6, 10-14, 21, 24, 26, 28, 36, and 37 should be allowed. Moreover, Applicants respectfully submit that withdrawn claims 3, 5, 7-9, 15-20, 22, 23, 25, 27, and 38 should be rejoined and allowed because they depend from one of independent claims 1 and 36.

Applicants respectfully request reconsideration of the application and timely allowance of the pending claims.


If the Examiner believes a telephone conversation might expedite prosecution of the application, the Examiner is invited to contact Applicants' attorney (571-203-2774).

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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